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NationsBank

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FEDERAL COMMUNICATIONS
COMMISSION
OFFICE OF THE
SECRETARY

May 27, 1992

The Federal Communications Commission
1919 M Street, N. W.
Washington, D.C. 20554

Re: Proposed Rules Implementing the Telephone Consumer Protection Act
of 1991

Dear Sir or Madam:

NationsBank Corporation and its subsidiaries would like to take this opportunity to comment on the proposed rules restricting the use of automatic telephone dialing machines and telephone facsimile machines for telemarketing purposes. NationsBank Corporation is a \$110 billion asset bank holding company with commercial banks in nine states plus the District of Columbia, and other financial services subsidiaries throughout the Eastern and Southern United States.

We appreciate the opportunity to comment. Should you have any questions regarding our comments, please contact Robin Warren, Senior Vice President and Senior Counsel at (404) 607-5036.

Sincerely,



Patrick M. Frawley
Director, Regulatory Relations Group

NationsBank Corporation Comments on Proposed Implementing TCPA

The proposed rules related to automatic telephone dialing systems and telephone solicitations directly affect the activities of some NationsBank subsidiaries.

Auto Dialers

The TCPA prohibits calls to residences using an artificial or pre-recorded voice to deliver a message without the prior express consent of the called party. The Commission proposes to prohibit calls using automatic telephone dialing systems or an artificial or pre-recorded voice to any emergency telephone line, any patient room of a health care facility or to any paging service or cellular telephone service. We would ask that this rule be qualified by exempting calls made to a telephone number expressly provided by the called party. Typically, calls made to a prior or existing customer for collection or solicitation purposes are made to a telephone number provided by the customer. NationsBank would have no way of knowing if the number furnished by the customer falls within one of the prohibited classes of numbers specified under proposed section 64.1100(a)(1). If a call is made to such a number furnished by a customer and NationsBank has no actual knowledge that the telephone number falls within the prohibited class of telephone numbers, this should not be deemed a violation of the law and regulation.

The Commission proposes to exempt certain messages from these restrictions, including a telephone call "that is made for a commercial purpose that does not include the transmission of any unsolicited advertisement," and a telephone call "to any person with whom the person has had a prior or current business relationship at the time the call is made." We concur that both of these exceptions are appropriate and necessary to the conduct of our business. Automatic dialing equipment and pre-recorded messages may be used to provide NationsBank customers with information regarding their accounts. Automatic telephone dialing systems are also used by some NationsBank subsidiaries to enhance the efficiency of collection activities. We would ask, however, that the exception for persons having a "prior or current business relationship" with us be expanded to include "any person with whom the caller or an affiliate of the caller or a third party for whom the caller acts as agent has had a prior or current business relationship at the time the call is made."

With regard to the proposed rules related to identification of the caller, we would point out that the rule, as proposed, could conflict with the requirements of the Fair Debt Collection Practices Act. Accordingly, we suggest that section 64.1100(d) be modified to state: "Except as otherwise prohibited by the Fair Debt Collection Practices Act or other applicable federal law, all artificial or pre-recorded telephone messages shall ..."

The Commission has requested comment on whether the "business relationship" exception should encompass prior, current or both prior and current customers of a business. Within the context of the financial services business, the exemption should include individuals who currently maintain or at any time in the past have maintained a contractual or financial relationship with the caller or with an affiliate of the caller or with the principal on whose behalf the caller-agent is calling.

Consumer Privacy Rights

The Commission has requested comment on five potential mechanisms designed to restrict telephone solicitations to subscribers who wish to avoid receiving such calls. NationsBank favors the use of a company-generated "do not call" list. Currently, our Telemarketing Unit maintains an in-house suppress file for both mail and phone solicitations. This information is updated quarterly on the company's marketing database. Additionally, telemarketing telephone lists are run against the Direct Marketing Association's Telephone Preference Service prior to the initiation of calling. We think this methodology allows us to be highly responsive to the preferences of our customers. Our primary concern is to meet the convenience and needs of our customers. We would prefer to use our own "do not call" list as supplemented by the existing list maintained by the Direct Marketing Association because we believe it is reliable and it eliminates the need to create a new and expensive database.

An alternative proposal upon which the commission seeks comment is the proposed establishment and operation of a single national database. NationsBank does not think such a national database is feasible. The Commission states that it is very unlikely that the database would be government sponsored or that it would receive federal funds. Consequently, such a database would depend upon industry consent to, and support of, a private provider of such a service. We question whether this is feasible as a practical matter. Moreover, a database, like the one currently used in Florida would be updated only quarterly or semi-annually. This means that consumers could continue to receive unwanted telephone calls for months after they have notified the national database of their preference to avoid such telephone calls.

With respect to network technologies that enable called parties to avoid calls from certain numbers, it is not clear whether current network technology and telephone numbering plans could support such a system.

Special directory markings are also an unsatisfactory alternative. It would be difficult, if not impossible, for national telemarketers to screen their marketing lists against such directory markings. Companies such as ours, that maintain their own internal telemarketing databases utilizing customer-furnished telephone numbers, would find it very time consuming and costly to screen our marketing lists against the directory markings. Moreover, since telephone directories are produced annually, this method would also have the disadvantage that it would not reflect current consumer preferences.

With respect to time-of-day restrictions, the Commission requests comment on whether to incorporate requirements similar to the restrictions contained in the Fair Debt Collection Practices Act. We think this is unnecessary. Unlike debt collection telephone calls, where regulation may be necessary to control overzealous collectors, advertisers have every incentive to call consumers at times that are reasonable and convenient to the consumer.

The Federal Communications Commission
1919 M Street, N. W.
Washington, D. C. 20554

cc: Eileen Cassidy
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